

JUN 17 2003

**NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

MICHELLE A. KOZUMA,

Plaintiff - Appellant,

v.

JO ANNE B. BARNHART, Commissioner,
of the Social Security Administration,

Defendant - Appellee.

No. 01-16109

D.C. No. CV-99-00828-LEK

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
Lesile E. Kobayashi, Magistrate Judge, Presiding

Argued and Submitted November 7, 2002
Honolulu, Hawaii

Before: SCHROEDER, Chief Judge, ALARCON, and FISHER, Circuit Judges.

Michelle Kozuma appeals the district court's grant of summary judgment in favor of her employer, the Commissioner of the Social Security Administration, in her action brought under the Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k).

We affirm.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Kozuma contends that she was terminated from her position with the Social Security Administration because she intended to become pregnant. The Commissioner produced evidence that Kozuma was terminated because of her poor job performance. Kozuma has the burden to show that the Commissioner's explanation for her termination is a pretext. See Godwin v. Hunt Wesson, Inc., 150 F.3d 1217, 1220 (9th Cir. 1998). Kozuma did not meet this burden.

The basis for Kozuma's termination was a "desk audit," which revealed problems with her work. During the course of a phone call regarding Kozuma's work performance, an Employee Relations Specialist recommended to Kozuma's supervisor that a desk audit be conducted. During the phone call, the Employee Relations Specialist also told the supervisor that it was better to terminate probationary employees such as Kozuma before the end of the probationary period than to wait. Kozuma has not produced any evidence to indicate that her employer was aware of her intention to become pregnant at the time of this phone call. See Collings v. Longview Fibre Co., 63 F.3d 828, 834 (9th Cir. 1995) (concluding that the evidence is insufficient to establish pretext where the defendant did not know the plaintiff was a member of the protected class). The district court did not err in granting summary judgment because Kozuma has produced neither direct evidence nor "specific and substantial" circumstantial evidence that the

Commissioner's reason for terminating her was a pretext. Godwin, 150 F.3d at 1221-22.

AFFIRMED.